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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 **YOUSEF BOUGUERBA,**

12 **Plaintiff,**

13 **v.**

14 **COUNTY OF SACRAMENTO, et al.,**

15 **Defendants.**
16

No. 2:20-CV-0957-JAM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action under 42
18 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or
22 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief
23 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover,
24 the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain
25 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This
26 means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d
27 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the
28 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because Plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the Court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 Plaintiff names as defendants the County of Sacramento and the Rio Cosumnes
7 Correctional Center, which is a county jail. See ECF No. 1, pg. 1. According to Plaintiff:

8 This lawsuit is in reference to COVID-19 and that the CDC
9 recommendations are not being met. Social distancing, mask, unclearly
10 environment and that I am innocent until proven guilty without any
11 medical testing being done. This is in violation of California Constitution
12 article 1 & 6 and being violated especially the 6th, 8th, and 14th
13 amendments with due process of law subjecting to cruel and unusual
14 punishment.

15 Id. at 3.

16 Municipalities and other local government units, such as the County of
17 Sacramento and the Rio Cosumnes Correctional Center, are among those “persons” to whom
18 § 1983 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978). Counties
19 and municipal government officials are also “persons” for purposes of § 1983. See id. at 691; see
20 also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
21 government unit, however, may not be held responsible for the acts of its employees or officials
22 under a respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S.
23 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not of
24 the actions of its employees or officers. See id. To assert municipal liability, therefore, the
25 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
26 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to
27 withstand dismissal even if it is based on nothing more than bare allegations that an individual
28 defendant’s conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los
Angeles Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988).

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1 Here, Plaintiff has not alleged any specific custom, policy, or practice of either
2 defendant which resulted in the violations alleged in the complaint. While Plaintiff states that
3 guidelines promulgated by the Centers for Disease Control and Prevention (CDC) “are not being
4 met,” Plaintiff does not allege this is due to any custom, policy, or practice of the County of
5 Sacramento or the Rio Cosumnes Correctional Center.

6 Because it is possible that the deficiencies identified in this order may be cured by
7 amending the complaint, Plaintiff is entitled to leave to amend prior to dismissal of the entire
8 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
9 informed that, as a general rule, an amended complaint supersedes the original complaint. See
10 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
11 amend, all claims alleged in the original complaint which are not alleged in the amended
12 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
13 Plaintiff amends the complaint, the Court cannot refer to the prior pleading in order to make
14 Plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
15 complete in itself without reference to any prior pleading. See id.

16 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
17 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
18 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
19 each named defendant is involved, and must set forth some affirmative link or connection
20 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
21 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

22 Finally, Plaintiff is warned that failure to file an amended complaint within the
23 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
24 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
25 with Rule 8 may, in the Court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
26 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's complaint is dismissed with leave to amend; and
2. Plaintiff shall file a first amended complaint within 30 days of the date of service of this order.

Dated: March 23, 2021



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE